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# Supreme Court of the United States

OCTOBER TERM, 1953.

No. 258

UNITED STATES OF AMERICA EX REL. VINCENZO CARROLLO, ALSO KNOWN AS CHARLES V. CARROLLO, PETITIONER,

VS.

A. H. BODE, DISTRICT DIRECTOR IMMIGRATION AND NATURALIZATION SERVICE, KANSAS CITY, MISSOURI, RESPONDENT.

**PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT.**

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**PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT.**

*To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:*

Your petitioner in support of his petition for a writ of certiorari to review the final judgment of the United States Court of Appeals, Eighth Circuit, entered May 19, 1953, at which time said court denied petition for rehearing of petitioner's appeal, wherein the United States Court of Appeals for the Eighth Circuit affirmed the denial of writ of habeas corpus by the United States District Court for the Western District of Missouri, respectfully shows:

A.

## SUMMARY STATEMENT OF THE MATTER INVOLVED.

This case is reported below at 204 F. 2d 220.

Your petitioner entered the United States at New Orleans, Louisiana, in January, 1906, when he was three years and five months of age and has resided here ever since. He married a citizen of the United States and six children, five daughters and a son, have been born to the marriage, of whom three daughters are married and a daughter aged 14, the son aged 5, and a daughter aged 4, remain at home. In 1939 petitioner was sentenced upon his conviction for the crime of perjury, 18 U. S. C. 1621, and on July 7, 1950, he was again sentenced to two years imprisonment upon his conviction of the crime of conspiracy to commit an offense against the United States, to wit, engaging in the business of a wholesale liquor dealer and wilfully failing to pay the special tax required to be paid (26 U. S. C. 3253).

On September 7, 1950, proceedings were commenced for petitioner's deportation under Section 19(a) of the Immigration Act of 1917, 8 U. S. C. 155, which provides for the deportation of any alien who subsequent to May 1, 1917, is sentenced more than once to imprisonment for one year or more because of conviction in this country of any crime involving moral turpitude committed at any time after entry. Warrant for his arrest was issued at this time and on May 10, 1951, the hearing officer concluded that petitioner was subject to deportation and ordered that he

be deported from the United States on the charge stated in the warrant of arrest.*1 (R. 43).

Appeal was taken to the Board of Immigration Appeals which board dismissed said appeal on December 7, 1951. Warrant-deportation of alien was issued by respondent on December 21, 1951, setting forth the charges contained in foot note below.

On June 12, 1952, application for writ of habeas corpus was filed in the United States District Court for the Western District of Missouri and a show cause order was issued thereon (R. 6, 7). On June 19, 1952, the District Court dismissed the application for writ of habeas corpus (R. 63) and from that decision petitioner appealed to the United States Court of Appeals for the Eighth Circuit, on the following grounds: (1) that conspiracy to engage in the wholesale liquor business (18 U. S. C. 371; 26 U. S. C. 3253) was not a crime involving moral turpitude within the meaning of the Immigration Act of 1917 (8 U. S. C. 155); (2) "warrant for arrest" and "warrant-deportation of alien" were insufficient and defective, and therefore invalid in that neither charged petitioner with deportable offense, and (3) that the lower court erred in considering crimes and offenses other than those charged in warrant for arrest and warrant-deportation of alien.

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*1. That under Section 19 of the Immigration Act of February 5, 1917, the respondent is subject to deportation on the ground that on or after May 1, 1917, he has been sentenced more than once to imprisonment for terms of one year or more because of conviction in this country of crimes involving moral turpitude, committed after entry, to wit: wilfully, falsely, corruptly, and feloniously committing wilful and corrupt perjury and conspiracy to engage in the wholesale liquor business, and at the same time wilfully failing to pay the special tax required to be paid and engaging in the wholesale liquor business and at the same time, wilfully failing to pay the special tax required by law to be paid by wholesale liquor dealers.

These contentions were rejected by the Court of Appeals (R. 65) (204 F. 2d 220). Following decision of the Court of Appeals on April 28, 1953, petition for rehearing was filed and denied by said court on May 19, 1953. This petition is filed within 90 days next after final judgment on May 19, 1953.

B.

**(1) STATEMENT OF THE JURISDICTION OF THIS COURT.**

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of June 25, 1948, c. 646, 62 Stat. 928 (28 U. S. C. 1254) and under the same Act, c. 646, 62 Stat. 961, amended May 24, 1949, c. 139, §106, 63 Stat. 104 (28 U. S. C. 2101).

**(2) THE DATE OF THE JUDGMENT TO BE REVIEWED.**

The judgment of the United States Court of Appeals for the Eighth Circuit affirming the denial by the District Court of writ of habeas corpus was entered on April 28, 1953 (R. 65). Petition for rehearing was denied on May 19, 1953 (R. 77). This petition, with supporting brief, and certified record, is filed within 90 days next after final judgment.

**(3) STATEMENT OF THE NATURE OF THE CASE AND THE RULINGS OF THE COURT OF APPEALS BRINGING THE CASE WITHIN THE JURISDICTION OF THIS COURT.**

The nature of the case (petition for writ of habeas corpus) has been heretofore stated. The Court of Appeals

ruled: (1) that conviction of petitioner for feloniously conspiring with others to commit an offense against *and to defraud the United States* (Italics supplied) by carrying on business of wholesale liquor dealer while wilfully failing to pay special tax required to be paid by wholesale liquor dealers involved "moral turpitude" within the meaning of the Immigration Act of 1917; and (2) that, where the warrant issued for the arrest of an alien at the commencement of deportation proceedings and the warrant-deportation contained the declaration that the alien was subject to be deported because he had been sentenced more than once to imprisonment for terms of one year or more because of conviction of crimes involving moral turpitude, committed after entry, the warrant and warrant-deportation were not defective (even though it was contended by petitioner that the conviction of the second crime specified in the warrant was not the conviction of a crime involving moral turpitude).

The third point raised on appeal to the effect that the District Court erred in considering crimes and offenses other than those charged in the warrants in basing its denial of the application for writ of habeas corpus was summarily rejected by the Court of Appeals in the following language: "That it was the intent of Congress to deport repeaters, viz., persons who commit a crime and are sentenced and then commit another and are sentenced again" (204 F. 2d 220, 223). The court further went on to say that the petitioner was in that category and that therefore the judgment denying his application for writ of habeas corpus should be affirmed.

Each of such rulings is reviewable by this Court under the appropriate statutory provisions noted above.

C.

## THE QUESTIONS PRESENTED.

(1) Is conspiracy to engage in the wholesale liquor business, and at the same time wilfully failing to pay the special tax required to be paid (18 U. S. C. 371; 26 U. S. C. 3253) a crime involving moral turpitude within the meaning of Section 19(a) of the Immigration Act of 1917 (8 U. S. C. 155a)?

(2) Since the second crime charged in the warrant for arrest and warrant-deportation of alien was a conspiracy to commit an offense against the United States, to wit, to engage in the wholesale liquor business, and not a conspiracy to defraud the United States, were said warrants insufficient and defective and therefore invalid in that neither charged petitioner with deportable offense?

(3) Did the District Court commit reversible error in considering crimes and offenses other than those charged in warrant for arrest and warrant-deportation of alien?

D.

## REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

(1) In its opinion at page 222, the Court of Appeals held that it had been shown without dispute that Carrollo, in addition to his conviction for perjury after his entry, was on a subsequent occasion (1950) convicted on his plea of guilty to the charge that he did "conspire to defraud the United States," and therefore he came squarely within the requirement of Section 155(a) of Title 8, U. S. C., as an alien who upon warrant of the attorney general shall be taken into custody and deported.

The uncontroverted facts*2 (R. 20) are that this petitioner in 1950, upon his plea of guilty was convicted by the court of the crime of conspiracy to commit an offense against the United States, to wit, engaging in the wholesale liquor business. At no time was he sentenced because of conviction for the crime of conspiracy to defraud the United States. Therefore, in applying this court's decision in *Jordan* v. *DeGeorge*, 341 U. S. 223, to the present case it is respectfully submitted that the Court of Appeals is in error. This point will be treated in more detail in the brief supporting this petition but it should be stated here that if Carrollo had been convicted and sentenced in 1950 for a crime in which fraud was an essential ingredient (as this Court pointed out repeatedly in the DeGeorge case), then that decision would apply and he would be deportable under the moral turpitude provision of the deportation statute; by the same token, if petitioner's case does not come within those carefully and distinctly marked out limitations, he does not stand convicted and sentenced for a crime involving moral turpitude and, therefore, should not be deported. In ruling that the Supreme Court's decision in the DeGeorge case should be expanded to cover the facts herein, the Court of Appeals has decided a federal question in conflict with the DeGeorge ruling of this Court and has rendered a decision in conflict with the decisions of other courts of appeals on the same subject (*U. S. ex rel. Andreacchi* v. *Curran*, 38 F. 2d 498; *U. S. ex rel. Guarino* v. *Uhl*, 107 F. 2d 399; *Takeo Tadano* v. *Manney*, 160 F. 2d 665).

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*2. "It is adjudged that the defendant has been convicted upon his plea of guilty entered heretofore on June 26, 1950, of the offense of conspiring to engage in the wholesale liquor business, and at the same time, wilfully failing to pay the special tax required to be paid by wholesale liquor dealers as charged in Count I. * * *"

(2) In ruling that the warrants in question were valid because each contained the declaration that the petitioner was subject to be deported in that after May 1, 1917, he had been sentenced more than once to imprisonment for terms of one year or more because of conviction in this country of crimes involving moral turpitude committed after entry, without giving any consideration to the vital question as to whether or not the specific convictions set out in the warrants were for crimes that actually involved moral turpitude, the Court of Appeals again has decided a federal question in conflict with decisions of this Court (*Fong Haw Tan* v. *Phelan*, 333 U. S. 6; *Delgadillo* v. *Carmichael*, 332 U. S. 388), and in conflict with decisions of other courts of appeals (*Ex parte T. Nagata*, 11 F. 2d 178; *Throumoulopolou* v. *U. S.*, 3 F. 2d 803; *U. S. ex rel. Iorio* v. *Day*, 34 F. 2d 920); or if the ruling below is not in conflict with the foregoing decisions of this Court, as petitioner contends it is, the Court of Appeals has decided an important question of federal law which has not been, but should be, settled by this Court. The ruling below is unmistakably in conflict on this point with the doctrine of the decisions of the Courts of Appeals cited directly above; furthermore, this ruling of the Court of Appeals presents an important question of federal law in light of the recent Immigration and Nationality Act of 1952, Public Law 414 (Act of June 27, 1952), otherwise known as the McCarran Act. Therefore it presents an important question of federal law which should be settled by this Court.

(3) In holding that the intent of Congress in enacting the deportation statute was to deport "repeaters," the Court of Appeals, it is respectfully submitted, has overlooked the legislative history of the Immigration Act of 1917. The District Court in denying the application for

writ of habeas corpus considered convictions against this petitioner other than those charged in the warrants in reaching his decision (R. 60, 61, 62). This the petitioner contended was error and in affirming the lower court the Court of Appeals has decided an important question of federal law directly in conflict with the decision of this Court in *Fong Haw Tan* v. *Phelan, supra.* Such conflict should be settled by this Court.

## CONCLUSION.

Each of the questions presented is of grave public importance. Unless the ruling below is reviewed, the law relating to deportation of aliens, both as to the question of moral turpitude, the substance of the offense alleged as basis for deportation, and the question of sufficiency of warrants employed as instruments for deportation will be left in confusion. Deportation proceedings are increasing in number and the conflicts with this Court and between the circuits, despite the DeGeorge decision, are unmistakable. Despite Board of Immigration Appeals construction of 26 U. S. C. 3253 to the effect that a violation of this statute does not involve moral turpitude (R. 49) and despite the same Board's observation in the instant case that the appropriate findings of the Immigration Service should have described the second crime more fully by designating it as a crime of conspiracy to commit an offense against and to defraud the United States (R. 47) (which the warrants did not), the Court of Appeals has held that because your peti-

tioner did not pay the tax of $100 to engage as a wholesale liquor dealer he should be deported. The effect of such a ruling is not only of fundamental importance to the alien involved, but is a question of vital urgency which in the public interest should be determined.

Wherefore, your petitioner prays that a writ of certiorari issue under the seal of this Court, directed to the United States Court of Appeals for the Eighth Circuit, commanding said court to certify and send to this Court a full and complete transcript of the record and of the proceedings of said United States Court of Appeals in the case numbered and entitled on its docket No. 14,701, *United States of America ex rel. Vincenzo Carrollo, also known as Charles V. Carrollo, Appellant,* v. *A. H. Bode, District Director Immigration and Naturalization Service, Kansas City, Missouri, Appellee,* to the end that this cause may be reviewed and determined by this Court as provided for by the statutes of the United States and that the judgment of said Court of Appeals be reversed by this Court and your petitioner prays that the certified copy of the record of proceedings of said United States Court of Appeals for the Eighth Circuit already on file with the clerk of this Court, may be treated as a return to said writ of certiorari, and your petitioner prays that he may have such other and further remedies in the premises

as to the Court may seem appropriate and in conformiy with the law.

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